



# Civil Resolution Tribunal

Date Issued: August 9, 2018

File: SC-2017-005766

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Killwood Inc. v. Lai, 2018 BCCRT 431*

BETWEEN:

Killwood Inc.

**APPLICANT**

AND:

Pierre Lai

**RESPONDENT**

---

## REASONS FOR DECISION

---

Tribunal Member:

Shelley Lopez, Vice Chair

## INTRODUCTION

1. This is a dispute about company property and alleged damages, between the applicant company, Killwood Inc., and the respondent, one of its 2 directors and co-owners, Pierre Lai. The applicant says Mr. Lai has stolen and is now

withholding the company's products, causing a loss of sales and business. The applicant is represented by Gleb Vaguine, the applicant's other co-owner. The respondent is self-represented.

2. The applicant wants \$2,000 in damages for lost business, \$500 for time Mr. Vaguine had to spend because Mr. Lai was not doing certain assigned tasks, and \$500 for money the applicant paid to an intern because Mr. Lai was not doing certain tasks. The applicant also wants orders that Mr. Lai step down as director and surrender his 50% of common shares in the applicant company. Finally, the applicant wants an order that the respondent return all finished and unfinished product and inventory, materials, marketing content, and "design collateral".

## **JURISDICTION AND PROCEDURE**

3. These are the formal written reasons of the Civil Resolution Tribunal (tribunal). The tribunal has jurisdiction over small claims brought under section 3.1 of the *Civil Resolution Tribunal Act* (Act). The tribunal's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the tribunal must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
4. The tribunal has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions, because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
5. The tribunal may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The tribunal may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.

6. Under tribunal rule 126, in resolving this dispute the tribunal may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the tribunal considers appropriate.

## **ISSUES**

7. The issues in this dispute are a) whether the respondent has improperly stolen or withheld the applicant's property, b) whether the respondent has caused the applicant a loss of sales or business, and c) if so, what remedies are appropriate.

## **EVIDENCE AND ANALYSIS**

8. In a civil claim such as this, the applicant bears the burden of proof, on a balance of probabilities. I have only referred to the evidence as necessary to give context to my decision.
9. The applicant's business is making wood objects. Based on the evidence before me, Mr. Vaguine's primary role in the business was in sales, and Mr. Lai's role was as a designer. As noted above, Mr. Vaguine provided submissions on behalf of the applicant.
10. It appears Mr. Vaguine's and Mr. Lai's relationship broke down in April 2017, although there is evidence of conflict dating back to September 2016, with Mr. Vaguine at that time expressly acknowledging his attitude and somewhat aggressive approach was problematic.
11. Mr. Lai submits Mr. Vaguine's hostility and aggression resulted in his feeling unsafe working with the company. While I am not prepared to accept Mr. Lai reasonably felt unsafe, for the purposes of this decision I find that Mr. Vaguine was at least 50% responsible for the breakdown in the partners' relationship.
12. By June 2017, Mr. Lai tried to sell Mr. Vaguine his half of the applicant's shares. Mr. Lai submits that theirs was a "true 50/50 partnership", which I accept, noting there is no evidence to the contrary. The parties disagreed about how to value Mr.

Lai's buy-out, and Mr. Vaguine and Mr. Lai disagree about whether the other provided sufficient information.

13. Mr. Vaguine alleges that Mr. Lai has withheld all of the applicant's product for 14 months and refuses to return it. Mr. Vaguine alleges this has caused a loss of substantial sales and market presence. Mr. Vaguine says the applicant has lost opportunities to work with numerous partners and lost one retailer as a result of an inability to provide product. Mr. Vaguine says this has caused a loss of sales in excess of \$2,000 as well as an increase in work effort by himself and an intern, which Mr. Vaguine values at \$500 each.
14. Mr. Vaguine alleges that by effectively abandoning his duties at the company, Mr. Lai has failed to act in the best interests of the corporation, contrary to section 122(1)(a) of the *Canada Business Corporations Act*. There is no evidence before me that the applicant is governed by this federal statute, although I will assume as directors they had a good faith obligation to act in the company's best interests. In any event, both Mr. Vaguine and Mr. Lai allege the other has withheld company assets from the other, and the evidence before me suggests they are both accurate. Mr. Lai says the product he has in his possession was product he always retained as it was his role to work on design materials. As noted above, the parties started negotiating in June 2017 about Mr. Lai's buyout from the company, but those negotiations failed.
15. The difficulty for the applicant is that it has produced no evidence to support its position that Mr. Lai can be held liable for the monetary damages claimed. There is no contract before me. There is no shareholders agreement. There is no partnership agreement. There is no evidence of the value of Mr. Vaguine's and Mr. Lai's respective 50% ownership in the applicant company.
16. In particular, while the applicant produced some rough sales figures between January 1, 2017 and May 14, 2018, I am unable to conclude that any reduction (and there was no linear drop in sales from April 2017, in any event) is attributable to Mr. Lai's conduct. The fact that there is a 57% drop in the applicant's

transactions and a 37% drop in sales from the year prior is also not proof that Mr. Lai's "absence" from the company after April 3, 2017 is to blame. I dismiss the applicant's claim for \$2,000 compensation for lost sales and business.

17. Mr. Vaguine also does not dispute that the company never paid anyone a salary. As for the \$500 each claimed for Mr. Vaguine's time and the intern's time, I find those claims are also not proven. The intern is not a party to this dispute and there is no evidence the applicant ever paid him. There is simply no evidence before me to support the \$500 figures claimed. I dismiss these claims.
18. I turn then to the applicant's request that Mr. Lai step down as director and surrender his 50% of common shares in the applicant company. I note that the applicant's claim is framed as "surrender", rather than payment to Mr. Lai. That said, it is clear from the underlying evidence that Mr. Vaguine has contemplated payment to Mr. Lai as one option.
19. In his evidence, Mr. Lai refers to his decision to "leave the company" given Mr. Vaguine's behaviour, which I have discussed above. Based on the evidence before me, Mr. Lai did not formally depart and there has been no valuation as to his shares in the company. However, Mr. Lai did not oppose the applicant's requests. The evidence is clear that Mr. Lai wants "out" of the applicant company. However, Mr. Lai submits that Mr. Vaguine has failed to be forthcoming or make a reasonable offer.
20. As noted, the parties' buy-out negotiations failed. Mr. Vaguine's offers ranged from 1) paying Mr. Lai \$175.71, being half the applicant's alleged total capital as of June 30, 2017, 2) paying Mr. Lai \$529.35, being half the alleged capital and half the expected revenue (there is some confusion about which quarters), and 3) Mr. Lai paying the applicant \$7,800, based on the claims advanced in this dispute. The third option was a threat of legal action, and associated expenses, if Mr. Lai did not accept one of the other 2 options.

21. Mr. Lai questions the valuation of capital, because it is based only on a bank statement, which Mr. Lai says the applicant could have manipulated. Mr. Lai also says it does not include a Paypal balance, the amount of which is unknown to Mr. Lai and is not in evidence before me. While there was inconsistency in Mr. Vaguine's written 2<sup>nd</sup> option, I find he intended half the expected revenue for the first 2 quarters in 2017 (Q1 and Q2), as Mr. Lai left the company as of June 2017. I infer from Mr. Lai's submission that he may reasonably be entitled to sales in Q3 and perhaps Q4, because Mr. Lai's work in prior quarters may have contributed to those sales.
22. On the one hand, given the limited evidence before me and the parties' positions, I might be inclined to order that the parties obtain the opinion of an independent valuator and that Mr. Lai receive 50% of the value assessed by that valuator. On the other hand, neither party requested that option nor does the amount of money at issue appear to warrant the associated expense, which could exceed the value of the company itself.
23. I find the applicant has not proven it is entitled to an order that Mr. Lai "surrender" his shares, without any payment. I dismiss the claim for "surrender". Given Mr. Lai is still a shareholder in this small company, I find it would be inappropriate to order Mr. Lai to step down as director, and so I dismiss that claim also. Rather, I consider Mr. Lai's resignation as director best tied to Mr. Vaguine's potential later buy-out of Mr. Lai's shares. I find I have insufficient evidence to arrive at a value of Mr. Lai's shares, and therefore I am unable to order a particular buy-out figure, which again I note neither party argued (given the applicant's claim for "surrender" of his shares). Mr. Lai did not file a counterclaim.
24. Finally, the applicant asks that Mr. Lai return all of the company's product. Mr. Lai says he owns the designs. I have insufficient evidence before me to resolve this issue, and in particular there is nothing specific in the applicant's evidence about what Mr. Lai has retained. I dismiss this claim. That said, nothing in this decision prevents the applicant from making a fresh claim about company assets if the

parties are unable to resolve the matter, once Mr. Lai's buy-out and resignation as director is completed.

25. The applicant was unsuccessful in this dispute. In accordance with the Act and the tribunal's rules, I find the applicant is not entitled to reimbursement of tribunal fees paid.

## **ORDER**

26. I order that the applicant's claims, and therefore this dispute, are dismissed.

---

Shelley Lopez, Vice Chair